

*In the Matter of Raquel Morton, City of Camden*  
DOP Docket No. 2004-2347  
OAL Docket No. CSV 2374-05  
(On remand No. CSV 2300-04)  
**(Merit System Board, decided June 7, 2006)**

The appeal of Raquel Morton, a Police Officer with the City of Camden, of her removal effective December 17, 2003, on charges, was heard by Administrative Law Judge Joseph Paone (ALJ), who rendered his initial decision on May 2, 2006, upholding the removal. Exceptions were filed on behalf of the appellant and on behalf of the appointing authority.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Merit System Board (Board), at its meeting of June 7, 2006, adopted the ALJ's findings of fact and conclusions of law and his recommendation to uphold the removal.

## **DISCUSSION**

The appellant was removed from employment based on charges contained in a May 8, 2003 Preliminary Notice of Disciplinary Action (PNDA)<sup>1</sup> which detailed specific incidents of misconduct purportedly engaged in by the appellant that related to narcotics and firearms violations and her alleged failure to effect a lawful arrest. Specifically, the appointing authority asserted that the appellant failed to arrest her husband who had an outstanding search warrant, helped her husband elude prosecution, and consorted with a known criminal. A departmental hearing on the charges was conducted on November 13, 2003. On December 17, 2003, the appellant was served with a Final Notice of Disciplinary Action (FNDA) sustaining the charges and removing her from employment, effective that date. The appellant appealed her removal to the Merit System Board which transmitted the matter to the OAL for a hearing as a contested case.<sup>2</sup>

---

<sup>1</sup> Initially, on April 27, 2001, the appointing authority immediately suspended the appellant without pay from her position as a Police Officer on charges, and served her with a PNDA at a pretermination hearing pursuant to *N.J.A.C. 4A:2-2.5(b)* and *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), seeking her removal from employment. The PNDA indicated that a "departmental hearing and subsequent administrative charges will be postponed pending the outcome of a criminal investigation by the Camden County Prosecutor's Office." On May 8, 2003, the appointing authority served a second PNDA at the conclusion of the criminal investigation.

<sup>2</sup>In the course of the proceedings at the OAL, the appellant filed a motion for summary decision to dismiss the charges on the basis that a departmental hearing was not conducted within 30 days of the charges being filed in accordance with *N.J.S.A. 40A:14-149*. She also moved for dismissal on the basis that the appointing authority failed to file the charges within 45 days of learning of the events underlying the charges pursuant to *N.J.S.A. 40A:14-*

In his initial decision, the ALJ outlined the charges against the appellant. They consisted of:

1. Conduct unbecoming a public employee;
2. Neglect of Duty;
3. Failure to take appropriate action concerning illegal activity and/or make a report of same;
4. Failure to follow departmental procedures for the handling of evidence taken into custody;
5. Failure to conduct himself/herself at all times in keeping with departmental code of ethics;
6. Loyalty to the department and its associates;
7. Withholding information concerning criminal activity;
8. Being truthful at all times, whether under oath or not;
9. Failure to take police action when necessary, at any time, and/or failure to make a written report of same;
10. Association, fraternization, or transacting business at any time or in any manner whatsoever with known criminals or persons engaged in unlawful activities.

The ALJ concluded that the appointing authority had only sustained its burden of proof with regard to the charges of conduct unbecoming a public employee, loyalty to the department and association/fraternization. Specifically, the ALJ found that the specifications relating to these charges were proved by legally competent evidence. For the charge of conduct unbecoming, the ALJ found that the appellant had found her husband in possession of a sealed plastic bag containing a white powder substance that was identified by her husband as heroin. Having this knowledge, the appellant failed to effect a lawful and proper arrest and/or take any police action. Regarding the charge of loyalty to the department, the specification was that the appellant allowed her husband to elude capture and prosecution for criminal activity. The ALJ found that the appellant admitted to knowing that her husband possessed guns and possessed and used controlled dangerous substances (CDS). The ALJ determined that the appellant had an affirmative obligation to provide this information to the police department. In failing to do so, she subordinated her obligation as a police officer and her allegiance to her fellow officers when she associated with her husband after

---

147. ALJ Donald J. Stein granted the appellant's motion and dismissed the charges against her. At its meeting on February 23, 2005, the Merit System Board did not adopt the ALJ's recommendation to dismiss the charges. Rather, the Board remanded the matter to the OAL for a hearing on the merits of the charges brought on the May 8, 2003 PNDA. A copy of the decision, *In the Matter of Raquel Morton* (MSB, decided February 23, 2005), is attached hereto and incorporated herein.

knowing that he was committing criminal acts. Further, the ALJ indicated that the specification in support of the association/fraternization charge was based on the appellant's consorting with known criminals engaged in criminal activity. Accordingly, he determined that since the appellant had admitted knowing that her husband possessed and used CDS and possessed a gun and still associated with him and allowed him to stay at her house, that the association/fraternization charge was sustained.

In determining that the appointing authority had not sustained its burden of proof with regard to the remaining charges, the ALJ found that the specifications did not specifically relate to the charges and/or that the charge was not proven with legally competent evidence. For example, with regard to the charge of neglect of duty, the ALJ found that the specification on which the charge was based, was that "having knowledge that her husband was in possession of illegal narcotics, the appellant failed to effect a lawful and proper arrest." The ALJ found that the appellant admitted she had found her husband in possession of heroin, but also found that there was no testimony or evidence presented which established the circumstances or conditions when a police officer must effect an arrest. He found that since the specification recited that the appellant "failed to make an arrest," he could not sustain the charge of neglect of duty. Concerning the charge of withholding information of criminal activity, the ALJ found that the specification for the charge was based on the appellant's "personal knowledge" regarding a drug-set. He determined that the only information regarding the appellant's "personal knowledge" came from hearsay statements of her husband and confidential informants, none of which was corroborated by competent evidence. Therefore, he could not sustain the withholding information charge.

When considering the appropriate penalty, the ALJ recognized that a Police Officer is a special kind of public employee and that his or her primary duty is to enforce and uphold the law. See *Moorestown v. Armstrong*, 89 N.J. Super. 560, 566 (App. Div. 1965), *cert denied*, 47 N.J. 80 (1966); *In re Phillips*, 117 N.J. 567 (1990). The ALJ also acknowledged that progressive discipline is generally the standard determining the appropriate penalty to be imposed when disciplinary charges have been sustained. See *West New York v. Bock*, 38 N.J. 500, 522-24 (1962). Specifically, the ALJ indicated that the factors to be considered are the employee's prior disciplinary record and the gravity of misconduct in the instant case. The ALJ found that the appellant had no prior disciplinary history. However, he found that her continued relationship with her husband over the course of several years reflected not only poor judgment but an utter disregard for her status and responsibilities as a Police Officer. After considering the range of penalties contained in the appointing authority's rules and regulations for the sustained charges, and

based on the totality of the appellant's conduct, the ALJ concluded that the appellant should be removed from her position as a Police Officer. Based on its *de novo* review of the record, the Board agrees with the ALJ that the appellant should be removed from her position as a Police Officer.

In her exceptions, the appellant argues that given the totality of the circumstances, the penalty of removal is too severe. In this regard, the appellant contends that she was suspended without pay in 2001 based on one charge relating to a search warrant that was executed at her home. Subsequently, the Camden County Prosecutor's Office (Prosecutor's Office) conducted a criminal investigation and determined that there was not even sufficient probable cause of wrongdoing on the appellant's part to present the matter to a Grand Jury. The Prosecutor's Office conducted a second investigation with the exact same outcome. In May 2003, new charges were brought by the appointing authority and an ALJ granted the appellant's motion for summary decision dismissing the charges contained in both the April 2001 and May 2003 PNDAs. While the Board determined that the May 2003 PNDA should not have been dismissed, it did dismiss the April 2001 PNDA and awarded the appellant back pay and benefits from April 27, 2001 to May 8, 2003. The appellant contends that these actions demonstrate bad faith on the part of the appointing authority. Alternatively, the appellant contends that the Board should reconsider its prior ruling and dismiss the May 2003 PNDA on the basis that ALJ Stein's determination was correct and just.

In its exceptions, the appointing authority argues that the ALJ erred in dismissing the charges of neglect of duty (charge 2), failure to properly handle evidence (charge 4) and failure to take police action (charge 9). The appointing authority submits that the evidence presented was sufficient to sustain the charges. Specifically, the appointing authority asserts that the specification for the charge of neglect of duty was:

On April 21, 2001, Camden Police Officer Raquel Morton #494, consented to a tape-recorded interview with Kenneth Curcio of the Camden County Prosecutor's Office, in regards to a search warrant that was executed at her residence for illegal narcotics. Upon having knowledge of her husband being found in possession of illegal narcotics, she failed to affect [sic] a lawful and proper arrest.

The appointing authority indicates that the ALJ's determination to dismiss this charge was based on his assertion that it failed to present evidence that

a police officer who witnesses the commission of a crime is obligated to take police action. The appointing authority asks the question: What is a police officer, if not someone who has taken an oath to uphold the law, which includes the arrest of suspected violators of the law or detaining the violators, while awaiting the arrival of back-up? Accordingly, the appointing authority contends that it proved that the appellant, by her own admission, witnessed a crime and took no action.

The appointing authority also asserts that the foregoing is directly related to the charge of failure to take police action when necessary. In this regard, the appointing authority contends that the ALJ misinterpreted the rule that the appellant had no obligation to make an arrest when she witnessed the commission of a crime. He did, however, state that “although she had an obligation to report what she knew . . . [t]hat conduct is not part of the specification.” The appointing authority maintains that the specification for this charge was:

On or about the month of April 2001, Camden Police Officer Raquel Morton #494 advised in a formal interview that she failed to affect [sic] a lawful arrest when encounter[ed] by a person(s) committing a crime.

The appointing authority asserts that the ALJ’s determination that the appellant had no obligation to make an arrest is an unreasonable stretching of the language of the rule (that if any member of an officer’s immediate family becomes involved in a situation requiring police attention, the officer shall summon another officer to handle the situation, unless of an emergency nature). The appointing authority argues that the intent of this rule is not to relieve officers from performing their sworn obligations if a member of the officer’s family is involved in the incident. The purpose of the rule is to involve another officer to insure adherence to proper arrest procedures and to secure any evidence. Additionally, the appointing authority contends that as in this case, a police officer acting alone in a criminal matter involving a relative could decide to destroy evidence, thereby eliminating any chance of the relative being arrested.

Further, with regard to the charge of violating the rule of failing to follow procedures for handling evidence, the appointing authority indicates that the specification for this charge was:

On April 27, 2001, Camden City Police Officer, Raquel Morton #494 gave an admission in a formal interview that she disposed of illegal narcotics,

which she located on her husband's person, by flushing same down the toilet. In addition, she failed to file the proper reports or make the proper notifications to her commanding officer.

Finally, as to this charge, the appointing authority argues that the ALJ found that the appellant "found a bottle containing Naprosyn, Percocet and other unprescribed pills" belonging to her husband. The ALJ also found that by her own admissions and actions, the appellant knew that possession of the foregoing without a valid prescription constituted a violation of the law, and knowing this, responded by flushing the pills down the toilet. Accordingly, the appointing authority argues that it proved that the appellant failed to follow the proper procedures with regard to evidence and that the charge relating to the destruction of evidence should be sustained.

In the instant matter, the Board finds that it has no reason to reject the ALJ's determination that the appointing authority sustained its burden of proof with regard to the charges of conduct unbecoming a public employee, loyalty to the department and association/fraternization. Specifically, the ALJ reviewed the exhibits, heard the testimony presented and observed the demeanor of the witnesses. Additionally, the Board notes that the appellant does not dispute the conclusions of the ALJ that these charges were sustained. She merely argues that the penalty of removal is too severe. Moreover, based on the record, the Board finds that the ALJ could have sustained the charges of neglect of duty, failure to follow procedures for handling evidence and failure to take police action. In this regard, the Board finds there was sufficient legally competent evidence presented with regard to the appellant's actions in flushing the drugs down the toilet and in not reporting her husband when she found drugs to sustain these charges.

With regard to imposing the penalty of removal, the Board, in addition to considering the seriousness of the underlying incident, utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock, supra*. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 N.J. 571 (1980). In this case, the fact that the appellant does not have any disciplinary history is immaterial since it is clear that removal is the proper penalty. The Board finds that the appellant's conduct was so inappropriate and unprofessional as to justify the penalty of removal. Even viewing the evidence in its most circumscribed light, it is clear that the appellant's behavior is antithetical to the standards by which a police officer is to be judged. Furthermore, the Board notes that this penalty is appropriate whether considering only the charges sustained by

the ALJ or the additional charges upheld by the Board. Accordingly, the Board concludes that, under these circumstances, the penalty of removal imposed by the appointing authority is neither unduly harsh nor disproportionate to the offenses, and should be upheld.

Finally, with regard to the appellant's arguments that the appointing authority has failed to comply with the Board's order to grant her back pay and benefits for the period of time from April 27, 2001 to May 8, 2003, the Board will consider this argument as a request for enforcement of that portion of the Board's February 23, 2005 order and will proceed with that matter independently.

## **ORDER**

The Merit System Board finds that the action of the appointing authority in removing the appellant from employment was justified. The Board, therefore, affirms that action and dismisses the appeal of Raquel Morton.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.